

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF PRAIRIEVILLE,

Plaintiff-Appellee,

v

ROBERT VANKEUREN,

Defendant-Appellant.

UNPUBLISHED

August 26, 2004

Nos. 247326; 247327; 247328

Barry Circuit Court

LC Nos. 01-000867-CE

00-000215-CE

01-000287-CE

Before: Whitbeck, C.J., and Owens and Schuette, JJ.

PER CURIAM.

In this consolidated action, defendant appeals by leave granted from three orders finding him guilty of civil and criminal contempt and ordering the removal of three buildings on defendant's property. We vacate the lower court's orders and remand this case to the trial court for imposition of contempt sanctions in conformance with the applicable statutes.

I. FACTS

Plaintiff township filed three separate actions against defendant for ordinance and code violations pertaining to three buildings on defendant's property. Plaintiff had converted some of his buildings into residences without following zoning, building, and electrical ordinances or the plumbing code. Some of the buildings utilized by defendant as residences had no running water or indoor plumbing. In separate orders, the trial court enjoined defendant from using his residence (building 1) as a two-family home or duplex and from using the other two subject buildings (buildings 4 and 5) as dwellings. Defendant failed to comply with these orders and, following a hearing, the trial court found defendant guilty of both criminal and civil contempt in each case. As sanctions for contempt of court, the trial court ordered defendant to pay three \$250 fines, plaintiff's costs and attorney fees, and further ordered defendant to remove all three buildings from his property within forty-five days, after which the trial court would allow plaintiff to remove the buildings at defendant's expense. Defendant appeals the sanctions requiring removal of the buildings from his property.

II. CONTEMPT OF COURT

Defendant asserts that the trial court erred in ordering the removal of the three buildings from his property as sanctions for contempt of court, arguing that such orders are not valid sanctions for either criminal or civil contempt. We agree.

A. Standard of Review

The issue here is a question of law: were the sanctions of removal or demolishing the buildings as imposed by the trial court permitted under the applicable law? Questions of law are reviewed de novo. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714; 624 NW2d 443 (2000).

B. Analysis

Contempt of court is a willful act, omission or statement which tends to impair the authority or impede the functioning of a court, *Auto Club, supra*, 708, or a neglect or violation of a duty to obey a court order, *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 501; 608 NW2d 105 (2000). Courts have inherent independent authority, as well as statutory authority, to punish a person for contempt. MCL 600.1701 *et seq.*; *In re Contempt of Dougherty*, 429 Mich 81, 91-92 n 14; 413 NW2d 392 (1987); *Auto Club, supra*, 708-709. this power is inherent, statutory provisions “are merely declaratory of the courts’ contempt powers and do not restrict or abridge those powers.” *Dougherty, supra* (internal citations omitted). However, “[e]ven though a court’s power to punish for contempt has been conceived of as inherent and not created by statute, where the legislature has laid down prescriptions for the punishment of contempt, courts must act within the framework and limits of the statutory enactment.” *Catsman v Flint*, 18 Mich App 641, 649; 171 NW2d 684 (1969), citing *Cross v UAW Local No. 155 (AFL-CIO)*, 377 Mich 202, 223-224; 139 NW2d 694 (1966).

Punishment for any contempt committed outside the presence of the court may be imposed only after proof of the facts charged are made by affidavit or other method and an opportunity has been given to defend. MCL 600.1711(2); *Auto Club, supra*, 712-713. Such indirect contempt can be punished only in conformance with statute, MCL 600.1711(2), court rule, MCR 3.606, and due process. *Auto Club, supra*, 713.

Three kinds of sanctions are available to redress a contemnor’s behavior: (1) civil coercion, to force compliance with an order; (2) criminal punishment to vindicate the court’s authority; and (3) civil compensatory relief for the complainant. *Dougherty, supra*, 98; *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 499; 608 NW2d 105 (2000). When the contempt is civil and consists of the omission to do what is still in the power of the contemnor to do, imprisonment may be imposed until he performs or no longer has the power to perform the act or duty and he pays any fine and costs. MCL 600.1715(2); *Dougherty, supra*, 96; *Auto Club, supra*, 711-712. Otherwise, the criminal sanctions for committing a forbidden act are generally limited to a fine of up to \$250 or imprisonment for up to thirty days, or both. MCL 600.1715(1); *Dougherty, supra*, 97; *Auto Club, supra*, 711.

In each of the three actions below, the trial court fined defendant \$250 and ordered him to pay plaintiff’s costs and attorney fees; these are proper sanctions under the clear language of the statutes. However, rather than imprison defendant until such time as he complied with the appropriate injunctions and court orders, the trial court ordered defendant to remove the three

buildings from his property within forty-five days and further held that, if defendant did not do so, plaintiff could remove the buildings and charge defendant for the cost of removal. Punishment imposed for contempt should be the least which is adequate to accomplish its purpose. *In re Contempt of Dudzinski*, 257 Mich App 96, 109; 667 NW2d 68 (2003). Given our Supreme Court's acceptance of the statutory limitations on the types of punishments courts can impose for civil and criminal contempt, we find that the trial court abused its discretion in ordering a punishment for contempt which exceeds those statutory limitations. While the trial court's imposition of the statutory fine and costs and attorney fees against defendant were appropriate sanctions, the trial court abused its discretion in ordering the removal of defendant's buildings rather than sentencing defendant to incarceration until such time as defendant complied with the judgments and orders of the court.

The trial court's orders requiring removal of defendant's three subject buildings are vacated and we remand the case to the trial court for imposition of appropriate statutory contempt sanctions. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Bill Schuette